

## Message Text

CONFIDENTIAL

PAGE 01 STATE 190442

61

ORIGIN PM-03

INFO OCT-01 SS-05 ISO-00 /009 R

66011

DRAFTED BY PM/NPO:RGROSE/JAN

APPROVED BY PM/NPO:LNOSENZO

----- 092069

R 010112Z AUG 76

FM SECSTATE WASHDC

INFO RUEHOT/AMEMBASSY OTTAWA 0000

AMEMBASSY CANBERRA

CINCPAC

C O N F I D E N T I A L STATE 190442

LIMDIS CINCPAC ALSO FOR POLAD

FOL REPEAT WELLINGTON 2871 ACTION SECSTATE 31 JUL.

QUOTE

C O N F I D E N T I A L SECTION 1 OF 2 WELLINGTON 2871

LIMDIS

C O R R E C T E D C O P Y (TEXT GARBLED)

E.O. 11652: GDS

TAGS: ANZUS, PFOR, MARR, MILI, NZ

SUBJ: AGREEMENTS ON LIABILITY FOR NUCLEAR ACCIDENTS

1. SUMMARY: THE AUCKLAND STAR (JULY 31) HAS RUN  
STORY THAT CANADA HAS AN AGREEMENT WITH THE UNITED STATES  
COVERING LIABILITY BY THE US FOR WARHEADS AS WELL AS REACTORS  
IN VISITING NUCLEAR WARSHIPS. THE ARTICLE ASKS WHY, IF  
CANADA CAN NEGOTIATE SUCH A LIABILITY PROVISION, IS THE  
GOVERNMENT OF NEW ZEALAND UNABLE TO DO SO. IN THE CURRENT  
ENVIRONMENT OF INTENSE CONTROVERSY OVER NPW VISITS THE  
QUESTION OF LIABILITY AGREEMENTS BETWEEN THE U.S. AND ITS  
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 STATE 190442

OTHER ALLIES WILL DRAW WIDE ATTENTION IN N.Z. AND THIS IS

CERTAIN TO BE RAISED WITH DEPUTY SECRETARY ROBINSON DURING VISIT HERE.

ACTION REQUESTED: URGENTLY NEED DEPARTMENT GUIDANCE ON DEALING WITH QUESTIONS ON SPECIAL AGREEMENTS MADE BY U.S. WITH INDIVIDUAL ALLIES ON LIABILITY FOR ACCIDENTS INVOLVING NUCLEAR REACTORS OR NUCLEAR WEAPONS.

2. TEXT OF AUCKLAND STAR STORY FOLLOWS:

CANADA HAS WARHEADS COVERED

CANADA HAS AN AGREEMENT WITH THE UNITED STATES COVERING LIABILITY BY THE US FOR WARHEADS AS WELL AS REACTORS IN VISITING NUCLEAR WARSHIPS.

NEW ZEALAND'S FOREIGN SAME ARRANGEMENT. IT RELIES ON THE JOINT US CONGRESSIONAL RESOLUTION ACCEPTING ABSOLUTE (NO FAULT) LIABILITY FOR DAMAGES FROM A NUCLEAR REACTOR INCIDENT ONLY.

OUR FOREIGN AFFAIRS MINISTRY WAS NOT AWARE OF THE AGREEMENT MADE IN 1968-69 BETWEEN CANADA AND THE US UNTIL THIS CORRESPONDENT SUPPLIED THE MINISTRY WITH INFORMATION RECEIVED FROM CANADA.

THE ORIGINAL STATEMENT WITHOUT THE CANADIAN AMENDMENT IS DIRECTED TO OTHER COUNTRIES APART FROM NZ. HERE IT IS STILL CLASSIFIED INFORMATION.

NEW ZEALAND'S FOREIGN AFFAIRS MINISTRY, APPARENTLY PLEASED TO RECEIVE THE NEW INFORMATION, IS NOW CHECKING INTO THE MATTER.

THE QUESTION IS: IF CANADA CAN NEGOTIATE AN EXTRA LIABILITY PROVISION, CAN NEW ZEALAND DO THE SAME? AND IF NOT, WHY NOT?

EARLIER I ASKED THE PRIME MINISTER, MR MULDOON, IF THE AMERICAN RESOLUTION ON UNLIMITED LIABILITY (FORMALLY KNOWN AS PUBLIC LAW 93-513) COVERED ANY ACCIDENT INVOLVING NUCLEAR WEAPONS.

MR MULDOON REPLIED: "THE JOINT CONGRESSIONAL RESOLUTION COVERS ONLY ACCIDENTS INVOLVING NUCLEAR REACTORS. ANY NUCLEAR WEAPONS THAT MIGHT BE ON BOARD A VISITING WARSHIP WOULD BE IN AN UNARMED STATE.

"IF THE POSSIBILITY OF A REACTOR ACCIDENT IS VIRTUALLY CONFIDENTIAL

CONFIDENTIAL

PAGE 03 STATE 190442

NON-EXISTENT, THE POSSIBILITY OF ONE INVOLVING NUCLEAR WEAPONS IS INFINITESIMAL."

BUT CANADA APPARENTLY CONSIDERED IT PRUDENT TO HAVE AN EXTRA PROTECTION.

IN CONTRAST TO THE GREAT IMPORTANCE NEW ZEALAND AUTHORITIES PLACE ON THE JOINT CONGRESSIONAL RESOLUTION ON UNLIMITED LIABILITY, THAT SAME RESOLUTION APPEARS TO RECEIVE COOL TREATMENT FROM THE LEGAL ADVISORY DIVISION OF CANADA'S DEPARTMENT

OF EXTERNAL AFFAIRS.

IN RESPONSE TO MY QUESTIONS, THE LEGAL ADVISORY DIVISION  
WRITES:

"THE US CONGRESS ENACTED PUBLIC LAW 93-513 ON DECEMBER  
6, 1974. IT IS NOTHING MORE THAN A UNILATERAL DECLARATION  
AND MAY BE REPEALED AT ANY TIME WITHOUT ANY NOTICE TO THE OUTSIDE  
WORLD

"IT CAN HAVE NO STATUS OUTSIDE A US COURT. IT STATES THAT  
THE US WILL PAY CLAIMS FOR INJURY, DEATH, OR DAMAGE TO PROPERTY,  
PROVEN TO HAVE RESULTED FROM A NUCLEAR INCIDENT INVOLVING THE  
NUCLEAR REACTOR OF A US WARSHIP.

"LONG BEFORE THIS ENACTMENT CANADIAN AUTHORITIES HAD  
TO CONSIDER UNDER WHAT CONDITIONS VISITS BY WARSHIPS WOULD  
BE CONSIDERED POSSIBLE AND ACCEPTABLE.

"IN FEBRUARY OF 1967, THE CANADIAN GOVERNMENT AGREED THAT  
AN UNDERTAKING BY THE US GOVERNMENT STIPULATING THAT EXCEPT  
IN CASES COVERED BY THE 1951 NATO STATUS OF FORCES AGREEMENT,  
CLAIMS ARISING OUT OF A NUCLEAR INCIDENT INVOLVING A VISITING  
NUCLEAR-POWERED WARSHIP SHOULD BE DEALT WITH THROUGH DIPLOMATIC  
CHANNELS, IN ACCORDANCE WITH PROCEDURES FOR THE SETTLE-  
MENT OF INTERNATIONAL CLAIMS UNDER GENERALLY ACCEPTED  
PRINCIPLES OF LAW AND EQUITY,  
COULD BE APPROVED AS SUFFICIENT EXPRESSION OF RESPONSIBILITY.

"SUCH A STATEMENT, IDENTICAL TO ONES DIRECTED TO OTHER  
COUNTRIES, WAS OFFICIALLY SUBMITTED TO THE CANADIAN AUTHORITIES  
BY THE US SECRETARY OF STATE ON FEBRUARY 20, 1967.

"ON MAY 6, 1968, AND AT THE INVITATION OF THE CANADIAN  
GOVERNMENT THE STATEMENT WAS AMENDED BY THE STATE DEPARTMENT  
SO AS TO ALSO COVER INCIDENTS INVOLVING NUCLEAR WARHEADS BEING  
CARRIED BY VISITING US WARSHIPS.

"ON MARCH 18, 1969, THE CANADIAN AUTHORITIES OFFICIALLY  
INFORMED THE STATE DEPARTMENT THAT CANADA CONSIDERED THE 1967  
CONFIDENTIAL

CONFIDENTIAL

PAGE 04     STATE 190442

STATEMENT AS AMENDED TO ITS SATISFACTION.

"IN 1970 A SIMILAR STATEMENT BY THE UK, WAS UNDER CONSIDERATION  
BUT A GOVERNMENT STUDY EXPRESSED ITSELF SATISFIED WITH THE  
LIABILITY COVER."

THE LEGAL ADVISORY DIVISION STRESSES THAT THE STATEMENTS  
ALSO DEALT WITH SAFETY STANDARDS MEANT TO ENSURE THAT THE  
RISK OF INCIDENTS WAS MINIMIZED.

"THE STATEMENTS SIMPLY REINFORCED THE LEGAL SITUATION  
AS IT WAS THEN PERCEIVED AS A RESULT OF THE STATUS OF  
FORCES AGREEMENT (SOFA) AND CUSTOMARY PROCEDURES  
FOR THE SETTLEMENT OF INTERNATIONAL CLAIMS UNDER GENERALLY  
ACCEPTED PRINCIPLES OF LAW AND EQUITY."

THE COMBINED EFFECT OF SOFA, CANADA'S VISITING FORCES ACT,  
AND THOSE GENERAL PRINCIPLES OF LAW EMPHASIZED BY THE STATE-  
MENTS, IS NOT SPELT OUT IN THE PAPER SUPPLIED, BUT IT DOES

ADD:

"IT SHOULD SUFFICE TO SAY THAT CANADA HAS CONSIDERED THESE TO BE ADEQUATE TO ALLOW, IN CONJUNCTION WITH OTHER SAFETY REQUIREMENTS, VISITS TO ITS PORTS OF NUCLEAR-POWERED USS WARSHIPS OR US SHIPS CARRYING NUCLEAR WARHEADS."

CANADA'S LEGAL ADVISERS STILL CONSIDER THAT LIABILITY COULD BE MORE TIGHTLY COVERED.

BUT THEY FEEL THAT IN THE LIGHT OF THE POLITICAL AND MILITARY CIRCUMSTANCES, THE ARRANGEMENTS ARE SATISFACTORY.

PUBLIC LAW 93-513 (THE JOINT RESOLUTION OF CONGRESS) OF DECEMBER 6, 1974, CONTRIBUTED TO REINFORCING THE ASSURANCES ALREADY RECEIVED.

SELDEN

UNQUOTE KISSINGER

CONFIDENTIAL

NNN

## Message Attributes

**Automatic Decaptioning:** Z  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** NUCLEAR AGREEMENTS, NUCLEAR SAFEGUARDS  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 01 AUG 1976  
**Decaption Date:** 28 MAY 2004  
**Decaption Note:** 25 YEAR REVIEW  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** SmithRJ  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
**Document Number:** 1976STATE190442  
**Document Source:** CORE  
**Document Unique ID:** 00  
**Drafter:** RGROSE/JAN  
**Enclosure:** n/a  
**Executive Order:** GS  
**Errors:** N/A  
**Film Number:** D760296-0936  
**From:** STATE  
**Handling Restrictions:** n/a  
**Image Path:**  
**ISecure:** 1  
**Legacy Key:** link1976/newtext/t19760898/aaaadica.tel  
**Line Count:** 184  
**Locator:** TEXT ON-LINE, ON MICROFILM  
**Office:** ORIGIN PM  
**Original Classification:** CONFIDENTIAL  
**Original Handling Restrictions:** LIMDIS  
**Original Previous Classification:** n/a  
**Original Previous Handling Restrictions:** n/a  
**Page Count:** 4  
**Previous Channel Indicators:** n/a  
**Previous Classification:** CONFIDENTIAL  
**Previous Handling Restrictions:** LIMDIS  
**Reference:** n/a  
**Review Action:** RELEASED, APPROVED  
**Review Authority:** SmithRJ  
**Review Comment:** n/a  
**Review Content Flags:**  
**Review Date:** 05 NOV 2003  
**Review Event:**  
**Review Exemptions:** n/a  
**Review History:** RELEASED <05 NOV 2003 by GarlanWA>; APPROVED <19 AUG 2004 by SmithRJ>  
**Review Markings:**

Margaret P. Grafeld  
Declassified/Released  
US Department of State  
EO Systematic Review  
04 MAY 2006

**Review Media Identifier:**  
**Review Referrals:** n/a  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** AGREEMENTS ON LIABILITY FOR NUCLEAR ACCIDENTS  
**TAGS:** PFOR, MARR, MILI, NZ, ANZUS  
**To:** OTTAWA CANBERRA  
**Type:** TE  
**Markings:** Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006